

FILED (DROP BOX)

The Honorable Thomas S. Zilly

JUL 28 2022

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
BY DEPUTY

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA, STATE OF  
CALIFORNIA, STATE OF HAWAII, STATE  
OF NEW MEXICO, and STATE OF  
WASHINGTON, *ex rel.* JOHN DOE,

Plaintiffs,

v.

DAIYA HEALTHCARE, PLLC and  
BHUPINDER WALIA, M.D.,

Defendants.

CASE NO. 22-CV-565-TSZ

**FILED UNDER SEAL**

Noted for Consideration on:  
July 28, 2022

**GOVERNMENTAL ENTITIES' EX PARTE APPLICATION  
FOR A PARTIAL LIFTING OF SEAL**

Pursuant to the False Claims Act, 31 U.S.C. §§ 3729–33, the United States of America and the States of Washington, Hawaii, New Mexico, and California (collectively, the “Governmental Entities”) respectfully apply to the Court *ex parte* for an Order giving the Governmental Entities discretion to inform Defendants and other necessary parties, including but not limited to, a relator and their counsel who are involved in a separate FCA *qui tam* action involving Defendant Daiya Healthcare, PLLC and similar claims, of the existence of this *qui tam* action, and provide Defendants

1 and other necessary parties with a copy of the Relator's Complaint, any future amended complaints,  
2 and the Order partially unsealing the case, in order to facilitate the Governmental Entities'  
3 investigation. Relator John Doe's counsel has been consulted and concurs with this request.

#### 4 PROCEDURAL HISTORY

5 On April 27, 2022, John Doe filed a Complaint in this action under seal pursuant to the *qui*  
6 *tam* provisions of the FCA and the relevant state false claim statutes, including the Washington State  
7 Medicaid Fraud False Claims Act ("MFFCA"), Wash. Rev. Code § 74.66.005, *et seq.*; the California  
8 False Claims Act, Cal. Gov't Code §§ 12650, *et seq.*; the Hawaii False Claims Act, Haw. Rev.  
9 Stat. §§ 661-21, *et seq.*; the New Mexico Medicaid False Claims Act, NM Stat. Ann. §§ 27-14-1, *et*  
10 *seq.*; and the New Mexico Fraud Against Taxpayers Act, NM Stat. Ann. §§ 44-9-1, *et seq.*; which  
11 permit individuals to file actions on behalf of the Governmental Entities. Relator completed service  
12 on the Governmental Entities on or about May 2, 2022.

13 Following completion of service of a *qui tam* action, the FCA and the relevant State  
14 analogues afford the Governmental Entities an initial sixty-day period to investigate the relator's  
15 allegations and determine whether to intervene in and assume prosecution of the action. *See* 31  
16 U.S.C. §§ 3730(a), (b)(2); Wash. Rev. Code § 74.66.050(2); Cal. Gov't Code § 12652(a)(3); Haw.  
17 Rev. Stat. § 661-25(b); NM Stat. Ann. § 27-14-7(C). The Governmental Entities have received one  
18 extension of the seal in this action. The current deadline for an intervention decision is January 1,  
19 2023.

#### 20 RELATOR'S ALLEGATIONS

21 Defendant Daiya Healthcare, PLLC is a Bellevue-based medical provider that provides  
22 medical professional services for multiple post-acute and long-term care facilities, including skilled  
23 nursing facilities, nursing facilities, and assisted living facilities in Washington State, as well as in

1 California, Hawaii, Idaho, New Mexico, and Oregon. Daiya provides both on-site medical staffing  
2 services and telemedicine services and Daiya employees include doctors, nurses, advanced  
3 registered nurse practitioners (ARNPs), physician assistants, and other providers. Defendant  
4 Bhupinder Walia, M.D. is the founder and CEO of Daiya.

5 Relator alleges that Defendants have engaged in several fraudulent schemes, primarily  
6 involving providing unnecessary medical services, participating in “up-coding” medical billing  
7 practices, and by providing patients with unneeded specialty services. Specifically, Relator alleges  
8 that Defendants employ off-site Clinical Documentation Specialists (CDSs), Chronic Care  
9 Management nurses, and Scheduling nurses, all of whom examine patient medical records and find  
10 reasons to schedule appointments with Daiya providers, without consultation from on-site facility  
11 nurses or the patients themselves. In Daiya’s skilled nursing facilities, the CDSs routinely schedule  
12 four provider appointments the first week of a patient’s admission, three visits the second week, two  
13 visits the third week, and four visits on subsequent weeks, irrespective of the medical necessity of  
14 any particular appointment. Defendants routinely schedule providers to see up to 16 patients per day,  
15 and at one point, Daiya financially incentivized providers to see 20 patients per day consistently.  
16 Daiya did not give individual providers the autonomy to remove patients from the schedule, even if a  
17 particular appointment was not medically necessary.

18 Furthermore, Relator alleges that Defendants instructed providers to “up-code” when billing  
19 to exaggerate the amount of care that was actually provided. Relator received a company-wide email  
20 from Dr. Walia on December 12, 2020, indicating that Daiya would make changes to the staffing  
21 model in order to increase revenues and combat decreasing reimbursement rates, and that employees  
22 would receive coaching on documentation. Shortly afterward, Relator was informed that his  
23 documentation did not meet Daiya’s quality standard, and, in January 2021, Relator was given a

1 mandatory education video training, in which he was instructed by Daiya's Director of Education  
2 that he should have billed all recent patient visits with the CPT code 99310, indicating high  
3 complexity, and which corresponded to the highest reimbursement rate. Relator believed that the  
4 true purpose of the mandatory training was to instruct Relator to bill at the highest level for every  
5 patient visit, no matter the patient's condition or the actual services provided by Relator. Relator's  
6 Complaint provided numerous examples of instances where Daiya providers began coding all patient  
7 visits at higher reimbursement CPT codes, even when the actual documentation of the visit did not  
8 justify the higher code.

9 Finally, Relator alleges that Daiya routinely provides medically unnecessary services through  
10 the practice of automatically scheduling specialty encounters at SNFs and billing them as acute  
11 visits, even when the only actual services provided are screenings to determine a patient's medical  
12 needs. In addition to primary care/internal medicine providers, Daiya employs providers who  
13 specialize in areas such as palliative care, psychology, and pain management. Relator alleges that  
14 Daiya routinely schedules a psychological screening for all patients whose medical record mentions  
15 a mental health-related diagnosis, no matter the patient's current symptoms, and despite the fact that  
16 the SNF separately conducts depression screening upon admission. Daiya then routinely scheduled  
17 and billed for follow-up appointments with mental health care professionals, even in instances where  
18 the specialty provider's initial screening indicated no current mental health concerns. According to  
19 Relator, Daiya also routinely scheduled and billed for duplicative pain management visits, even in  
20 instances where the primary provider's notes indicated that pain management encounters were not  
21 medically necessary.

## THE INVESTIGATION

The Governmental Entities have reviewed Relator's Complaint and the documentation submitted by Relator in support of his allegations, assembled an investigative team, and have initiated a comprehensive review of Medicare, Medicaid, TRICARE, Civilian Health and Medical Program of the Department of Veterans Affairs ("CHAMPVA"), and Federal Employees Health Benefits Program ("FEHB") claims data. The Governmental Entities also conducted an initial interview of Relator on June 2, 2022. The investigation is at an early stage and will be significantly enhanced if the Governmental Entities are able to investigate and resolve any potential first-to-file issues that may exist.

## ARGUMENT AND AUTHORITIES

*Qui tam* actions are sealed at their outset to give the Government the opportunity to investigate a relator's allegations without defendants necessarily knowing that they are the subject of an investigation. Specifically, the legislative history of the FCA's *qui tam* provision reveals that:

Keeping the *qui tam* complaint under seal for the initial 60-day time period is intended to allow the Government an adequate opportunity to fully evaluate the private enforcement suit and determine both if that suit involves matters the Government is already investigating and whether it is in the Government's interest to intervene and take over the civil action.

...

\* \* \* \*

... The initial 60-day sealing of the allegations has the same effect as if the *qui tam* relator had brought his information to the Government and notified the Government of his intent to sue. The Government would need an opportunity to study and evaluate the information in either situation. ...

S. Rep. No. 99-345, at 24 (1986), *as reprinted in* 1986 U.S.C.C.A.N. 5266, 5289.

Disclosure is in the interests of justice and judicial economy. The existence of *qui tam* cases pending under seal with similar or overlapping claims bears the seeds for potential conflict among

putative relators because each may contend that he or she has a valid stake in any future judgment or settlement with the Defendants. The Governmental Entities submit that the most efficient way to resolve potential conflicts between such relators is to disclose the existence of each of the actions to them so that they may attempt to resolve their potentially competing claims amicably and without litigation. Disclosure will prevent misunderstandings that impede the investigation of this case, distract the relators, and divert the Governmental Entities' resources to resolving relator disputes rather than investigating and pursuing the fraud allegations.

Additionally, the Governmental Entities seek to synchronize their investigation of this matter with their investigations of other potentially similar *qui tam* matters that have been filed or may be filed in this Court or other courts that concern Relator's allegations, Defendants, and any associated or affiliated entity. A partial lift of the seal will facilitate these efforts, enabling the Governmental Entities to address all of these matters simultaneously when conducting certain aspects of their investigation or coordinating with other States, the courts in which the other matters are pending, or the relators for the other matters.

Accordingly, where, as here, the Governmental Entities have determined that a partial lifting of the seal may advance the Governmental Entities' interests and investigation, the Court should partially lift the seal so that it does not encumber the very party Congress intended the seal to benefit. As noted above, Relator's counsel concurs with this request.

## CONCLUSION


For the reasons set forth above, the Governmental Entities request permission, at their discretion, to notify Defendants and other necessary parties of this *qui tam* action and provide them with a copy of the Complaint, any future amended complaints, and the Court's Order granting this application.



1 DATED this 28th day of July, 2022.

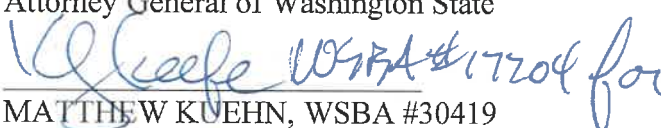
2 Respectfully submitted,

3  
4 NICHOLAS W. BROWN  
United States Attorney

5  WABA #17204 for  
6 MATT WALDROP, Georgia Bar #349571  
Assistant United States Attorney  
United States Attorney's Office  
7 700 Stewart Street, Suite 5220  
Seattle, Washington 98101-1271  
8 Phone: 206-553-7970  
Fax: 206-553-4067  
9 Email: [james.waldrop@usdoj.gov](mailto:james.waldrop@usdoj.gov)

10 *Attorneys for the United States of America*

11  
12 ROBERT W. FERGUSON  
Attorney General of Washington State

13  WSBA #17204 for  
14 MATTHEW KUEHN, WSBA #30419  
Assistant Attorney General  
Office of the Attorney General of Washington  
15 State  
Medicaid Fraud Control Division  
16 On behalf of the States  
P.O. Box 40114  
17 Olympia, WA 98504-0124  
Phone: 360-586-8888  
18 E-mail: [matthew.kuehn@atg.wa.gov](mailto:matthew.kuehn@atg.wa.gov)

19 *Attorneys for the State of Washington*